



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : **LON/00AC/LSC/2019/0098**

Property : **27, Laburnum Close, London N11 3NR**

Applicant : **Mr. George Mobargha**

Respondent : **Colney Hatch management Co. Ltd.**

Type of Application : **For the determination of the payability
of a service charge and related costs
orders**

Tribunal Members : **Tribunal Judge Stuart Walker**

**Date and venue of
Hearing** : **Decided on the Papers**

Date of Decision : **20 May 2019**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £199.90 demanded by the Respondent for the 2018 service charge year in respect of a right to manage levy is not payable and so is not recoverable from the Applicant.
- (2) The Tribunal determines that no sum is payable by or recoverable from the Appellant in respect of charges for arrears reminder letters and/or interest.
- (3) The application for an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings may be passed to the Applicant through any service charge is granted.
- (4) The application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 which extinguishes any liability the tenant may have to pay an administration charge in respect of the costs incurred by the Respondent incurred in connection with these proceedings is granted.
- (5) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imburement by the Respondent of the fee of £100 paid by the Applicant in bringing this application is granted. Payment is to be made within 28 days.

Reasons

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of sums demanded by the Respondent in respect of the 2018 service charge year.
2. The application was made on 11 March 2019. Directions were issued on 21 March 2019. These identified that the Applicant's case was that the Applicant disputed the payability and reasonableness of a levy of £119.90 purportedly to cover the costs incurred in connection with a right to manage application in which he does not wish to participate and sums in respect of reminder fees arising from his failure to pay the levy.
3. The Applicant also sought an order under section 20C of the 1985 that the Respondent's costs of these proceedings may not be added to the service charge and an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") extinguishing any liability to pay an administration charge in respect of litigation costs in connection with these proceedings.

4. The application originally named the freeholder as the Respondent but the directions noted that Colney Hatch Management Co. Ltd. are named in the lease as the management company and that under the lease the Applicant covenanted directly with them. The provision of services and the collection of service charges is dealt with exclusively by the company and so it was directed that they should be named as the Respondent in these proceedings.
5. The directions provided that the Tribunal would determine the application on the papers in the week commencing 20 May 2019 unless within 28 days of the directions either party requested a hearing. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.
6. In his statement in reply dated 15 April 2019 the Applicant also sought the reimbursement of the £100 fee he had paid to the Tribunal (see page 60).
7. The relevant legal provisions are set out in the Appendix to this decision. Page numbers in what follows are references to the agreed bundle.

The background

8. The property which is the subject of this application consists of a studio flat in a purpose-built block of flats which forms part of a large estate.
9. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Lease

10. The Applicant has a lease that was granted on 11 January 2013 which was made between himself, the freeholder and the Respondent for a term until 31 August 2174. It incorporates all the terms of a previous lease dated 2 July 1986 to which the Respondent was a party. By clause 5 of the current lease the landlord, tenant and management company (the Respondent) all enter into the same covenants as contained in the original lease. It is, therefore, necessary to consider the terms of the original lease and references to clauses in what follows are to that lease.
11. By clause 4(f) of the lease the Applicant covenants to pay and contribute a proportion of the costs and expenses of making, repairing, painting, supporting, rebuilding, cleansing and maintaining various parts of the buildings and various services benefitting the building. The Applicant also covenants to pay a proportion of the costs and expenses incurred by the Company in carrying out its obligations under Clause 7 which are themselves the obligations contained in the Schedule to the lease.

12. By clause 5(b) of the lease the Applicant independently covenants to pay to the Respondent the service charge defined in paragraph 14 of the Schedule. This is a fixed sum of £100 in respect of studio flats.
13. Paragraph 13 of the Schedule provides that any expenses incurred by the Respondent under paragraphs 1 to 12 of the Schedule shall be payable by each lessee in defined proportions.
14. Paragraphs 1 to 12 deal with such matters as enforcing covenants against lessees, decoration, insurance, the repair and maintenance of various parts of the estate, the payment of rates, water rates and other outgoings, and the provision of common television reception facilities.
15. Paragraph 12 of the Schedule requires the Respondent;
“To pay the fees and disbursements paid to any managing agent appointed by the Company [the Respondent] but if the Company does not appoint such agent it shall be entitled to add a sum not exceeding 10% of the total of any expenditure incurred by the company under the provisions of this Schedule for administration”
16. There is no other express provision in the lease dealing with general management functions.

The Issues

17. There is no dispute about the sums sought by the Respondent in respect of the carrying out of repairs and renovations. The Applicant was charged a total of £430.28 for this (page 17). The Applicant’s case, which has not been contradicted, is that this sum has been paid in full as required (see para 3 of his statement in response (page 59)).
18. The dispute arises as a result of a decision by the Respondent to levy an additional charge of £119.90 in respect of legal costs incurred in commencing the procedure for obtaining the right to manage the estate from the freeholder (page 17). There is no dispute that the Applicant did not wish to participate in this application and so refused to pay this additional levy. This sum forms the first part of the dispute.
19. In its service charge demand dated 2 January 2018 the Respondent made a charge for a total of £550.28, this being the service charge in respect of repairs etc plus the additional levy. In this notice it states that any outstanding balance will attract interest at 2.5% per annum above Barclays Bank base rate together with an administration fee of £50 plus £50 for each reminder letter sent plus disbursements (page 20).
20. In his application the Applicant raises an additional sum of £100 which he says has been charged for reminder letters. This would make a total disputed sum of £219.90. However, elsewhere in his application he states that the total value in dispute is £223.43 (page 5). This corresponds with the 2019 service charge demand which states that the sum of £223.43 is still outstanding from the 2018 year (page 21). The difference between the sums is not explained but

it appears likely to the Tribunal that the difference of £3.53 represents interest charged on the unpaid sum of £119.90.

21. Having considered all the documents provided (whether specifically referred to or not), the Tribunal has made determinations on the various issues as set out below.

The Applicant's Case

22. The Applicant's case is a simple one. He argues that the levy in respect of legal fees connected with the making of a right to manage application is simply not recoverable under the terms of the lease. In support of this contention he relies on the decision in Wilson -v- Lesley Place (RTM) Co. Ltd [2010] UKUT 342.

The Respondent's Case

23. The Respondent's case is set out at pages 66 to 68. It argues that costs such as legal and professional fees which are incurred by the landlord may be recharged to the tenants and makes it clear that the costs which are being claimed are legal fees following a motion approved by the shareholders to pursue a right to manage application.
24. The Respondent explains that the freeholder was refusing to allow it to insure one of the blocks on the estate using its own insurer and that it considered that the insurance premiums being charged by the freeholder's insurers were too high. It therefore concluded that the only way to reduce the costs of insurance was to obtain the right to manage and then choose their own insurers. (I note in passing that, of course, it remains open to tenants to challenge the reasonableness of any charges, including insurance premiums, by application to the Tribunal). The approach of the Respondent is that obtaining the right to manage will in the long-run save the tenants money by reducing the insurance costs.
25. Although the Respondent avers that the service charge is payable as per the lease agreement it makes no reference to the terms of the lease to justify this particular charge. It simply contends that as the legal costs of the right to manage application are included in the service charge budget the Applicant is liable to pay.
26. The Respondent explains that a further £100 has been charged for the sending of reminders.

The Tribunal's Decision

27. The Tribunal agreed with the Applicant's contention that the sums sought by the Respondent do not fall within the scope of the service charge provisions in the lease.

28. In this case the scope of the lease is very narrow. There is no general management clause as such. The functions set out in the Schedule and for which the Respondent is entitled to charge are limited to functions of decoration, repair and maintenance of various parts of the estate or services provided to it, insurance, enforcement of covenants and payments of rates and outgoings. Although the Respondent may appoint a managing agent under paragraph 12 there is no suggestion that such an agent has been appointed. The Respondent may only, therefore, make a 10% charge for administration. It is not suggested that the charge being sought is by way of an administration charge under this provision. However, even if it were, the sum which can be charged is a proportion of expenditure which can properly be made under the remaining provisions in the lease.
29. In the Tribunal's view it cannot be argued that the legal costs incurred in seeking to acquire the right to manage fall within the scope of the lease. There is simply nothing in the wording of the lease which justifies the making of such a charge. The Tribunal is strengthened in its view by the decision in the case of Wilson where the Upper Tribunal expressed the view that the costs of establishing and running a right to manage company were not costs of dealing with the general management of a block of flats in terms of their maintenance and insurance (see para 15 at page 121).
30. Given that the Respondent had no right to demand the levy of £119.90 from the Applicant it follows that he had paid all that could properly be demanded of him and so there was no basis for making charges for reminder letters and/or interest on the unpaid sum of £119.90. It follows that no sums, whether the £100 for reminder letters or £3.53 (or any other sum) in interest, are payable by the Applicant.
31. In any event, the Tribunal can also see no basis in the terms of the lease for the charging of the penalties sought even if there were sums outstanding. The sums sought are expressly described as flat fees rather than an actual reflection of costs incurred by the Respondent and the lease makes no provision for such fees.

Application under s.20C

32. The Applicant applied for an order under section 20C of the 1985 Act. This would prevent the Respondent from recovering its costs in resisting this application through the service charge. Given the wording of the lease it is debatable whether the lease would permit such a recovery in any event. However, the Tribunal is satisfied that it is just and equitable to make such an order.
33. The Applicant has been entirely successful in his application. The Respondent in its case had clearly not addressed its mind to the question of whether the sums sought were recoverable under the terms of the lease as no mention was made to any particular provisions of the lease in its statement of case. In addition, the Applicant sought to resolve the dispute by mediation or

alternative dispute resolution (see page 16) but this offer appears not to have been accepted.

34. The Tribunal makes an order under section 20C such that any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
35. In his application in relation to section 20C the Applicant has named 20 other tenants to be included in the application. Nothing further has been said about any of these others and the Respondent contends that they have in fact paid the levy (page 68). The Tribunal therefore limits the section 20C order to the Applicant himself.

Application under Paragraph 5A

36. Although the terms of the lease in this case may give such an order limited effect, for similar reasons the Tribunal makes an order under paragraph 5A of Schedule 11 of the 2002 Act extinguishing any liability the Applicant may have to pay an administration charge in respect of the litigation costs of these proceedings.

Application under Rule 13.

37. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to make an order requiring the reimbursement of fees paid by a party to the proceedings. For the reasons set out in para 32 above the Tribunal was satisfied that an order should be made reimbursing the Applicant the sum of £100 in respect of the fees paid and that they should be paid within 28 days.

Name: Tribunal Judge S.J.
Walker

Date: 20 May 2019

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
 and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
 - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate Tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

- 5A(1)A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.
 - (3)In this paragraph—
 - (a)“litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceedings.